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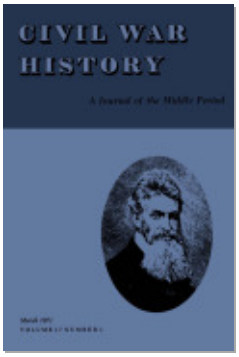

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ALTHOUGH AMERICAN NEGRO SLAVERY came to be a uniquely southern institution, runaway slaves found no legal dividing line between slave and free states. The fugitive slave clause of the Constitution, which guaranteed the return of interstate fugitives "held to Service or Labour," gave southern slave codes extraterritorial validity, so that escape into a free state offered slaves no legal refuge from pursuit by their masters. During the 1850's rendition of slaves in northern states increasingly involved questions of states' rights and civil liberties. The use of federal officials to enforce the Fugitive Slave Act of 1850 appeared to support antislavery charges that an aggressive "slave power" conspiracy was invading, under the protection of the national government, the free soil of sovereign northern states as well as free western territories above the Missouri Compromise line. The summary procedures of a fugitive slave hearing seemed to violate traditional standards of Anglo-American justice and to substantiate claims that slaveholders were antirepublican power mongers.[1] A number of free state legislatures adopted statutes, so-called "personal liberty laws," which purported to counteract the use of federal power on behalf of slave interests and to insure state protection of the liberty of free Negroes by guaranteeing fugitive slave suspects rights such as trial by jury and *habeas corpus*. Southern spokesmen and most Northern Democrats charged that the liberty laws violated sacred constitutional obligations and threatened the property of citizens of slaveholding states.

Despite northern and southern concern over the issue of fugitive slaves during the 1850's, historians have not adequately examined the personal liberty laws passed in that decade. Neither the laws' antebellum critics nor later historians have even agreed upon which states enacted liberty bills.[2] An examination of the controversy surrounding

[1] Arthur E. Bestor Jr., "State Sovereignty and Slavery: A Reinterpretation of Proslavery Constitutional Doctrine, 1846-1860," *Journal of the Illinois Historical Society*, LIV (1961), 117-180; Larry Gara, "Slavery and the Slave Power: A Crucial Distinction," *Civil War History*, XV (1969), 5-18.

[2] The laws passed before 1850 have been given greater attention than those enacted after the Fugitive Slave Act of 1850. See Alexander Johnston, "Personal Liberty Laws," John J. Lalor (ed.), *Cyclopaedia of Political Science, Political Economy, and of the Political History of the United States* (Chicago, 1884), III, 162-163; Julius Yanuck, "The Fugitive Slave Law and the Constitution" (Ph.D. Dissertation, Columbia University, 1953), 32-34; Joseph Nogee, "The Prigg Case and

these laws adds another dimension to the extent of mutual hostility and suspicion that existed between the slave and free sections of the Republic in November, 1860.

Sectional conflict over the return of fugitive slaves originated in the ambiguity of the Constitution. Drafted hurriedly late in the Convention, the fugitive slave clause did not specify whether the return of runaway slaves was the responsibility of state or federal officials.[3] The Fugitive Slave Act of 1793 only complicated the problem of enforcement because its framers created no national apparatus to recover fugitive slaves. Slaveowners themselves were to seize their interstate runaways and to take them before a wide variety of state and national officers who, after a summary hearing, would issue a certificate authorizing their removal from the state.[4] Antislavery groups complained that kidnappers took advantage of the Act's flimsy procedural safeguards to sell large numbers of blacks into slavery, but calls for additional protection of free Negroes encountered southern demands for strengthening the fugitive law by requiring greater state assistance to slave claimants.[5] As a result, Congress passed no new legislation affecting fugitive slaves until 1850.

Even though Congress did not act, some northern states adopted various kinds of laws. Kidnapping laws, the earliest and most limited type of state legislation, established penalties for abduction of free blacks but did not affect legitimate claims by slaveholders.[6] A few northern legislatures passed a second type of statute which provided claimants with separate state procedures for rendition of runaways. Alternatives to the Fugitive Slave Act of 1793, these state fugitive slave laws did not seriously hamper the operation of the federal act and generally represented a compromise between southern desires for more state assistance and antislavery demands for greater protection of the liberties of free

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Fugitive Slaves, 1842-1850," *Journal of Negro History*, XXXIX (1954), 185-205. For differing lists of the number of states with personal liberty laws, see, for example, Allan Nevins, *The Emergence of Lincoln* (New York, 1950), II, 29 and J. G. Randall and David Donald, *The Civil War and Reconstruction* (Boston, 1961), p. 122.

[3] Max Farrand, *The Records of the Federal Convention of 1787* (New Haven, 1911), II, 443, 446, 601-602, 628.

[4] William R. Leslie, "A Study in the Origins of Interstate Rendition: The Big Beaver Creek Murders," *American Historical Review*, LVII (1951), 63-76 examines the background and framing of the act; *U.S. Statutes at Large*, I, 302-305.

[5] For the arguments of antislavery congressmen, see *Annals of Congress*, 15 Cong., 1 sess., pp. 231, 245, 837-840; Jacobus Ten Broek, *The Antislavery Origins of the Fourteenth Amendment* (Berkeley, 1951), pp. 32-33, supports antislavery claims about the kidnapping of free blacks under the Fugitive Slave Act of 1793; for complaints by southern congressmen see *Annals of Congress*, 16 Cong., 1 sess., pp. 553, 606, 618, 1379-1380, 1717, 1863.

[6] New York (1808, 1819, 1828), Indiana (1816), Connecticut (1821), Ohio (1819, 1821, 1857), Pennsylvania (1820), Michigan (1827), Maine (1838), Wisconsin (1839); for convenient summaries of these laws see John C. Hurd, *The Law of Freedom and Bondage in the United States* (Boston, 1858-1862), II, 34, 44, 54-58, 70-71, 118, 122, 127, 138-139, 141.

blacks. Some of the provisions of these kidnapping and state fugitive slave laws were inconsistent with the federal act, but all free states recognized the right of slaveowners to recover their property through some simple legal procedure.

These two types of statutes—kidnapping and fugitive slave laws—were primarily objectionable because their provisions differed from those of the Fugitive Slave Act of 1793, not because they were hostile to national authority or to southern slaveholders.[7] More radical laws, which openly defied the national government and marshaled state power to aid fugitive slaves, were passed in 1840 by Whig-controlled legislatures in Vermont and in New York. Similar in their provisions, these laws "to extend the right of trial by jury" guaranteed fugitive suspects a trial, public funds to summon witnesses, and an attorney at state expense. Vermont, in effect, forbade use of the federal law by declaring illegal the removal of alleged fugitives under any procedure except their own. New York required claimants to post bond and to reimburse anyone found to be a free man.[8]

In 1842 the United States Supreme Court tried, but failed, to settle the confusion over the constitutionality of state laws affecting fugitive slaves. In *Prigg* v. *Pennsylvania,* a case involving a kidnapping prosecution against a slaveowner who had seized a runaway without complying with either Pennsylvania or federal law, the Court appeared to declare unconstitutional all state laws affecting the rendition process. The separate opinions of the Taney Court, however, only created judicial confusion, forcing state and lower federal courts to continue the task of defining the proper scope of state jurisdiction. Referring to the numerous conflicting state statutes, Justice Joseph Story, who wrote the "official" opinion of the Court, held that the power to legislate on fugitive slaves rested exclusively with the national government and that "any State law or State regulation, which interrupts, limits, delays, or postpones the right of the owner to immediate possession of the slave" was void. Story went on, however, to claim that even though states could not hinder a slaveowner, they were not constitutionally required to aid him by enforcing the Fugitive Slave Act of 1793. In what may have been a subtle antislavery maneuver, the Massachusetts Justice held that

[7] William R. Leslie discusses two of these state fugitive slave laws: "The Pennsylvania Fugitive Slave Act of 1826," *Journal of Southern History,* XVIII (1952), 429-445; and "The Constitutional Significance of Indiana's Statute of 1824 on Fugitives from Labor," *Journal of Southern History,* XIII (1947), 338-353. State fugitive slave laws were also passed in New Jersey (1826, 1837), Connecticut (1838, repealed 1844), Ohio (1839, repealed 1843). Hurd, *Law of Freedom and Bondage* II, 46-47, 64-67, 119-120.

[8] *Acts and Resolves Passed by the Legislature of Vermont at Their October Session, 1840,* pp. 13-15; *Laws of the State of New York, 1840,* pp. 174-177. Valuable background on events surrounding the passage of the New York law is found in William E. Seward, *An Autobiography from 1801 to 1834 with a Memoir of His Life, and Selections from His Letters, 1831-1846 by Frederick W. Seward* (New York, 1891), pp. 463-465; and in George Baker (ed.), *The Works of William E. Seward* (Boston, 1884), II, 413-414, 432-433, 449-518.

state judges could, "if they choose," act under the federal law "unless prohibited by state legislation." Chief Justice Roger B. Taney severely criticized Story's reference to possible prohibitory state legislation, predicting that withdrawal of state officials would cripple the Fugitive Slave Act.[9]

The Massachusetts legislature did take advantage of Story's dictum that a state might prohibit its judges from enforcing the act of 1793. A Massachusetts law of 1843, enacted in response to popular sentiment against the rendition of fugitive slaves in Boston, prohibited state officers from participating in fugitive slave cases and also forbade use of state jails for detention of suspects.[10] When the antislavery movement gathered momentum in the 1840's, the Massachusetts "Act for the Protection of Personal Liberty" became the model for laws passed in Vermont, Connecticut, New Hampshire, Pennsylvania, and Rhode Island.[11]

The precise effect of withdrawal of state participation by these personal liberty laws is difficult to measure. Undoubtedly extralegal, violent resistance to slave claimants had as much, if not more, to do with the breakdown of the Fugitive Slave Act than state legislation. Whatever their real impact on recovery of fugitives, leading northern jurists rejected the constitutionality of the laws and condemned their consequences. United States Supreme Court Justice Robert C. Grier advised his fellow Pennsylvanian James Buchanan that, because the statutes compelled state officers to disregard the fugitive slave clause of the Constitution, the Supreme Court would treat them "as entirely unconstitutional, null, and void." Liberty laws had an "evil" effect on domestic tranquility, Grier believed, encouraging "fanatics, fools and negroes to incite riots, insult, beat and murder, the owners of slaves."[12] Another Supreme Court Justice, Samuel Nelson of New York, told a federal grand jury that the laws were more dangerous than riots and slave rescues

[9] Story's opinion is in 16 *Peters* 417, pp. 417-433 (1842); Taney's opinion is in *ibid.*, pp. 433-440. See also William W. Story, *Life and Letters of Joseph Story* (Boston, 1851), II, 393-395; William R. Leslie, "The Influence of Joseph Story's Theory of the Conflict of Laws on Constitutional Nationalism," *Mississippi Valley Historical Review*, XXV (1948), 203-220; Joseph C. Burke, "What Did the Prigg Decision Really Decide?" *Pennsylvania Magazine of History and Biography*, XCIII (1969), 73-85. The best example of the judicial confusion resulting from the individual opinions of the Taney Court is the attempt of the Indiana courts to interpret the *Prigg* decision; see *Graves v. The State*, 1 *Ind. Rep.* 480 (1849), *Devant v. Michael*, 2 *Ind. Rep.* 396 (1850), and *Donnell* v. *The State*, 3 *Ind. Rep.* 368 (1852). The United States Supreme Court clarified its position somewhat in *Moore* v. *The People of Illinois*, 14 *Howard* 539 (1855).

[10] *Acts and Resolves of Massachusetts, 1843*, p. 33; Massachusetts General Court, *Joint Special Committee on Fugitives From Slavery* (House Report No. 41); Martin Duberman, *Charles Francis Adams* (Boston, 1961), pp. 80-86.

[11] Nogee, "The Prigg Case," 199-202; Yanuck, "Fugitive Slave Law," 32-34. In 1843, the Maine House of Representatives passed a personal liberty bill similar to the Massachusetts statute, but the Maine Senate rejected the bill. *Twelfth Annual Report Presented to the Massachusetts Anti-Slavery Society . . . January 24, 1844* (Boston, 1844), p. 17.

[12] Grier to Buchanan, Apr. 2, 1850, James Buchanan Papers, State Historical Society of Pennsylvania.

because they destroyed southern confidence in the North's willingness to fulfill constitutional requirements.[13] Southerners considered the liberty laws unconstitutional and used them as evidence of the need for strengthening the Fugitive Slave Act. Southern politicians, especially those from states near Pennsylvania, complained that liberty laws lured runaways northward. Protest meetings were held in Maryland; Virginia and Maryland representatives in Washington denounced "Northern nullification" and called for stricter federal legislation; Virginia issued an official report condemning the "deeper venom" and "more determined hostility" of the liberty laws; a South Carolina politician proposed retaliatory legislation directed against northern commerce within his state.[14]

Removal of state assistance through the personal liberty laws of the 1840's influenced the form of the Fugitive Act of 1850. Drafted by James Mason of Virginia, the new law strengthened enforcement by adding national officials and federal processes. Although Congress did not repeal the old procedures of the 1793 act, claimants no longer had to rely upon state officials and state courts. The new law authorized special federal fugitive slave commissioners to issue certificates of removal after a summary hearing. Congress allowed no jury trial, and alleged fugitives could not testify in their own behalf. Southern representatives successfully opposed amendments, such as William Seward's jury trial provision, that would have complicated or slowed the rendition process. Part of the Compromise of 1850, the fugitive law passed the Senate by a voice vote and the House of Representatives by a solid margin when a number of Northern Whigs left the chamber to avoid the final balloting.[15]

The Fugitive Slave Act, the most troublesome part of the Compromise, divided northern citizens. "Union meetings" strongly endorsed the law. James Buchanan told such a meeting that fugitive slaves did not deserve a jury trial since fugitive criminals enjoyed no such "privilege." "Surely," wrote Buchanan, "the fugitive slave is not entitled to superior privileges over the free white man." Daniel Webster appealed for support of the new act, blaming its passage upon the "theoretic, fanatical, and fantastical agitation" that had produced the personal liberty laws.[16] Many northerners rejected such counsel and denounced

[13] "Charge to a Grand Jury of the United States Circuit Court of New York, April 7, 1851," in *American Law Journal*, III (1851), 560-61.

[14] *Cong. Globe*. 30 Cong., 1 sess., pp. 610-611; *ibid.*, 30 Cong., 2 sess., p. 188; Herman V. Ames (ed.), *State Documents on Federal Relations: The States and the United States* (Philadelphia, 1906), pp. 250-252; C. J. Faulkner to John C. Calhoun, July 15, 1847, in Chauncey S. Boucher and Robert P. Brooks (eds.), "Correspondence Addressed to John C. Calhoun, 1837-1849," *Annual Report of the American Historical Association for the Year 1929* (Washington, 1929), pp. 385-387; L. M. Keitt to Calhoun, Oct. 1, 1847, *ibid.*, p. 402.

[15] Yanuck, "Fugitive Slave Law," 40-59; Holman Hamilton, *Prologue to Conflict: The Crisis and the Compromise of 1850* (Lexington, Ky., 1964), pp. 140-141, 161-162.

[16] John Bassett Moore (ed.), *The Works of James Buchanan* (Philadelphia, 1908-

the Fugitive Slave Act as the most odious portion of the Compromise. Opposition to the new law was closely linked to states' rights slogans and to the cause of civil liberty. Critics viewed the use of federal slave commissioners and United States marshals upon northern free soil as illegal encroachment upon sovereign state jurisdiction. Orators and pamphleteers criticized the absence of a jury trial, the use of *ex parte* evidence, and the substitution of a "mere" commissioner for a judge.[17]

Some opponents of the fugitive law turned directly to the states for a remedy. An Ohio state judge issued a writ of *habeas corpus* to release a fugitive slave suspect from federal custody, and a New York anti-slavery group brought suit against a United States marshal who aided slave claimants. The most extreme example of state defiance came in 1854 when the Wisconsin Supreme Court freed Sherman M. Booth, a Milwaukee abolitionist held by the federal government for leading a slave rescue, and declared the Fugitive Slave Act unconstitutional.[18] Despite judicial resistance in several states, only Vermont passed a new personal liberty law. Whig legislators, with the cooperation of Whig Governor Charles T. Williams, sneaked through a comprehensive liberty law on the last day of the 1850 session after many members had already left the capitol. Similar to Vermont's 1840 law, the new statute promised fugitive slave suspects jury trial, right of *habeas corpus*, defense counsel, and state payment of all legal fees.[19]

The law provoked immediate complaints in both North and South, the loudest protests coming from Virginia's Democratic governor, John B. Floyd. Floyd advocated a retaliatory state tax on all northern products until free states stopped interfering with the fugitive law. Floyd's suggestion, which was summarily rejected by cooler heads in the Virginia legislature, received an unfavorable reception throughout the rest of the South. Southern moderates received strong support from President Millard Fillmore who announced his determination to enforce vigorously the fugitive law and warned against attempts to nullify it through state legislation.[20]

1911), VIII, 401; Daniel Webster to "Mr. . . . . of Boston," in George T. Curtis, *Life of Daniel Webster* (New York, 1870), II, 426-427.

[17] Henry Wilson, *History of the Rise and Fall of the Slave Power in America* (Boston, 1871), II, 304-312; Russel B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy* (rev. ed., East Lansing, Michigan, 1963), pp. 267-270.

[18] *Trial of Henry W. Allen, U.S. Deputy Marshall for Kidnapping. . . .* (n.p., [1852?] pamphlet); *ex parte Robinson*, 20 Fed. Cas. 960 (1855); E. F. Hall, *et al.* (eds.), *Official Opinions of the Attorneys General of the United States* (Washington, 1852-1949), VI, 237-239, 713-714; Yanuck, "Fugitive Slave Law," 151-177, 195-203; *in re Booth*, 3 Wisc. 157 (1854).

[19] *The Acts and Resolves Passed by the Legislature of Vermont, at the October Session, 1850*, pp. 9-10; Boston *Evening Transcript*, Dec. 19, 1850; Richmond *Whig*, Dec. 27, 1850; Richmond *Enquirer*, Apr. 1, 1851.

[20] Richmond *Whig*, Dec. 10, 1850, Apr. 4, 1851; James D. Richardson (ed.), *A Compilation of the Messages and Papers of the Presidents, 1789-1897* (Washington, 1896-1899), V, 137-138; Avery O. Craven, *The Growth of Southern Nationalism, 1848-1861* (Baton Rouge, 1951), pp. 152-153; Allan Nevins, *Ordeal of the Union* (New York, 1947), II, 346-379.

Outside Vermont, legislators heeded Fillmore's warning and rejected calls for new personal liberty laws. This legislative moderation which characterized the early 1850's sprang from a concern for the grave constitutional issues, from a fear of sectional discord, and from a belief that there was general popular support for the Fugitive Slave Act. A petition drive by New York City blacks for additional protection against kidnapping did not attract support from white legislators. Attempts to enact a new Massachusetts liberty law, secretly drafted by Charles Sumner and Richard Henry Dana, failed in 1851 and again in 1852.[21] Whig Governor William Johnston saved the section of Pennsylvania's 1847 liberty law, which barred use of state jails, by vetoing a Democratic-sponsored repeal bill in 1851. The following year the Democrats successfully removed the jail provision after newly-elected Democratic Governor William Bigler assailed the ban as unconstitutional and as a serious irritant to relations between "the different sections of the country."[22] Bigler believed that there was substantial support for the Fugitive Slave Act in Pennsylvania and that the Democratic party would gain at the polls by attacking the antislavery opposition to the law.[23]

Northern citizens slowly had become reconciled to the Fugitive Slave Act of 1850, but passage of the Kansas-Nebraska Act in May, 1854, shattered this forbearance. Opponents of the Nebraska bill denounced the repeal of the Missouri Compromise line as an unprovoked attack upon freedom and liberty by the "slave power."[24] Enactment of the bill coincided with, and helped to spark, a violent confrontation over the return of a fugitive slave in Boston. The furor following the rendition of Anthony Burns captured national headlines and helped to link anger against the Nebraska bill with the fugitive slave issue.[25] Southern intrusion upon the supposedly free territory of Kansas seemed to be accompanied by invasion of the sacred free soil of sovereign northern states. In the wake of these events, support for, or deference to, the Fugitive Slave Act collapsed completely and many politicians began to echo antislavery claims that an aggressive, antilibertarian "slave power" threatened northern liberties, especially those of black residents. Southern provocations, it seemed, had to be confronted everywhere; liberty had

[21] *Civil Liberty Outraged* (New York, n.d. pamphlet). Robert F. Lucid (ed.), *The Journal of Richard Henry Dana, Jr.* (Cambridge, Mass., 1968), II, 416; Boston *Evening Transcript*, Apr. 7, 8, 9, May 2, 1851; *ibid.*, May 15, 1852.

[22] *Pennsylvania Archives, Fourth Series. Papers of the Governors, 1681-1902* (Harrisburg, 1900-1902), VII, 481-496, 519-521; *Laws of the General Assembly of the Commonwealth of Pennsylvania, 1852*, 295; extract of legislative debates printed in Richmond *Enquirer*, Apr. 1, 1851.

[23] William Bigler to Franklin Pierce, June 26, 1852, Franklin Pierce Papers (microfilm edition).

[24] James A. Rawley, *Race and Politics: Bleeding Kansas and the Coming of the Civil War* (Philadelphia, 1969), *passim.*

[25] Lucid (ed.), *Journal of Richard Henry Dana, Jr.*, II, 625-638; Sarah Forbes Hughes (ed.), *Letters and Recollections of John Murray Forbes* (Boston, 1899), 142-144; New York *Tribune*, May 28, 29, 30, 31, 1854.

to be vindicated. Garrison's Massachusetts Anti-Slavery Society urged individual citizens to resist slave claimants with force, but most northerners rejected the vigilante tactics employed in Boston.[26]

Members of the collapsing Whig and Free Soil parties joined leaders of the infant Republican and American parties to urge repeal or reform of the fugitive slave laws. Some politicians called for new personal liberty laws to meet the southern threat. Charles Sumner assured Massachusetts Republicans that he would work for repeal of the Fugitive Slave Act and advocated that the Bay State pass a new liberty law similar to the one rejected by the 1851 and 1852 legislatures. Horace Greely's *Tribune* and Henry J. Raymond's New York *Times*, while counselling against violent resistance, advised state legislatures to pass laws insuring the basic civil rights of fugitive slave suspects.[27] As a practical matter, these gestures of resistance to the rendition of fugitive slaves were one of the few ways northern legislators could express their outrage over the Kansas-Nebraska Act. Most advocates of state action did not contemplate real interposition or nullification but supported personal liberty laws primarily as a symbol of northern resistance to "aggression" by the "slave power."

In 1854 and early 1855, when northern legislatures met for the first time after the passage of the Kansas-Nebraska Act, anti-Nebraska politicians turned rhetoric into statutory reality in six states. Connecticut, Vermont, and Rhode Island passed personal liberty laws in 1854; Michigan, Maine, and Massachusetts adopted laws the following spring.[28] The acts differed in detail, but there was substantial interstate borrowing since antislavery leaders sought advice from allies in other states.[29] Some legislatures followed the post-Prigg pattern by prohibiting employment of state officials or facilities in fugitive slave cases.[30] As a protest against the summary nature of the fugitive slave hearing, other laws contained certain procedural guarantees: more favorable rules of evidence barring depositions and requiring oral testimony from two witnesses; jury trials; and special state defense attorneys.[31] Denial

[26] New York *Times*, May 30, 1854.

[27] Charles Sumner (ed.), *The Works of Charles Sumner* (Boston, 1870-1883), III, 453-461; New York *Tribune*, May 31, June 30, 1854; New York *Times*, May 29, 30, June 1, 1854.

[28] *Public Acts, Passed by the General Assembly of the State of Connecticut, May Session, 1854*, pp. 80-81; *Acts and Resolves Passed by the General Assembly of the State of Vermont at the October Session, 1854*, pp. 50-52; *Acts and Resolves of the General Assembly of the State of Rhode Island and Providence Plantations, June Session, 1854*, pp. 22-23; *Acts of the Legislature of the State of Michigan, 1855*, pp. 413-415; *Acts and Resolves of the State of Maine, 1855*, pp. 207-208; *Acts and Resolves of Massachusetts, 1855*, p. 924. See also *Acts of Michigan, 1855*, p. 202.

[29] See, for example, Charles Sumner to John Jay, Mar. 3, 1855, in Edward L. Pierce, *Memoir and Letters of Charles Sumner* (Boston, 1877-1893), III, 417.

[30] Rhode Island, Michigan, and Maine.

[31] Michigan and Massachusetts guaranteed jury trial; Vermont, Connecticut, and Michigan required testimony of two witnesses; Vermont and Connecticut barred the use of depositions; Michigan and Massachusetts provided state defense attorneys.

of state aid and erection of safeguards in state courts were worthless victories for blacks, however, because slave claimants could use the Fugitive Slave Act of 1850 which provided a wholly national system of enforcement. No state could bind federal courts or United States commissioners to requirements not contained in federal laws or procedures. The Massachusetts liberty law of 1855 raised the threat of more effective action by authorizing state interposition in fugitive slave cases. Massachusetts empowered state judges to issue writs of *habeas corpus* to release suspects from federal authorities and to hear claims under state law. Know-Nothing Governor Henry J. Gardner, believing that this removal provision raised serious constitutional issues, rejected the entire law, but a coalition of Know-Nothings and Republicans overrode his veto by a large margin.[32]

Defenders of personal liberty laws argued that the acts were legitimate answers to the repeal of the Missouri Compromise and to the deficiencies of federal fugitive slave laws. Most proponents of state action did not deny the binding validity of the Constitution's fugitive slave clause, but they did claim that there was no longer any obligation to obey the Fugitive Slave Act of 1850.[33] Passage of the Kansas-Nebraska Act, according to state Senator William H. Robertson of New York, "released the Free States from all obligations that may be expressed or implied in any compromise on the subject of slavery outside the Federal Constitution." United States Senator James Cooper of Pennsylvania defended the laws as proper "countervailing" legislation against southern aggression in the territories.[34] While most adopted this "tit-for-tat" argument without rejecting the supremacy of federal authority, some defenders of state action based their position upon the Virginia and Kentucky Resolutions of 1798 and 1799. Their constitutional arguments represented the classic linking of libertarianism and states rights. State governments had the right, indeed the duty, to redress all infringements upon fundamental individual freedoms, even if this meant opposing the authority of the national government. The Fugitive Slave Act of 1850, it was argued, violated one of the most basic state rights—the right to protect the personal liberty and safety of its black residents.[35] "Bluff

[32] *Acts of Massachusetts, 1855*, p. 924; *Liberator*, May 25, 1855; Boston *Evening Transcript*, May 1-30, 1855; Joel Parker, *Personal Liberty Laws, (Statutes of Massachusetts)* . . . . (Boston, 1861, pamphlet), pp. 31-33. Political opponents of Gov. Gardner, an ex-Whig elected on the American ticket, charged that his veto was a political maneuver to counter southern Democratic claims that abolitionists had infiltrated the American party. New York *Tribune*, July 28, 1855; Nevins, *Ordeal of the Union*, II, 396-397.

[33] One exception was the small group of New York abolitionists, including Frederick Douglass and Gerrit Smith, who advocated that states intervene to prevent the return of all fugitive slaves to the South. New York *Tribune*, July 2, 1855; *Radical Abolitionist*, Apr. 1856.

[34] New York *Tribune*, Mar. 24, 1855; *Cong. Globe*, 33 Cong., 2 sess., Appendix, p. 221.

[35] See, for example, Carl Schurz, *The Reminiscences of Carl Schurz* (New York, 1907-1908), II, 110-111; Sumner (ed.), *Works of Sumner*, III, 156-157, 356-357,

Ben" Wade of Ohio used the doctrines of 1798 and 1799 to claim not only that northern states had the power to pass personal liberty laws, but also that state courts had the final authority to determine the constitutionality of the Fugitive Slave Act. Surrender of the right of state review, according to Wade, would "yield up all the rights of the States to protect their own citizens" and "turn this government into a miserable despotism." Samuel P. Chase of Ohio and some abolitionist spokesmen repeated Wade's claim that a despotic central government was endangering state liberties.[36] The states rights position received its strongest support from the Wisconsin judges who declared the Fugitive Slave Act of 1850 unconstitutional and denounced attempts to appeal their decision to the United States Supreme Court.[37]

Southern leaders, championing the supremacy of national judicial and executive authority, quickly protested these new examples of state defiance of the fugitive slave laws. Senator Judah P. Benjamin of Louisiana charged that nullification doctrines had changed their locale: "South Carolina is now taken into the arms and affectionately caressed by Ohio, Vermont, Michigan, Wisconsin, and Connecticut."[38] Virginia Democrats, facing political competition from the fledgling American party, were particularly loud in their protests, painting the American party with the black brush of abolitionism because of Know-Nothing support for the 1855 Massachusetts liberty law.[39] A few southerners advocated nonintercourse or commercial boycott in retaliation, but most, believing that they had caught northern legislatures in clearly unconstitutional positions, attempted to avoid radical measures themselves. Slave state leaders recognized that almost all retaliatory proposals violated the full faith and credit clause of the Constitution and that the united front necessary for a successful economic boycott was impossible.[40] Several attempts at federal remedies, initiated by southern representatives or by their Northern Democratic allies, died in Congress. Representative Eli M. Shorter unsuccessfully proposed expelling the congressional delegations from states with personal liberty laws. Senator Charles Stuart of Michigan failed to win support for construction of a federal jail in his state to detain fugitive slave suspects barred from

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410-411; New York *Tribune*, May 23, 1899; *Radical Abolitionist*, Sept. 1855; see also Bestor, "State Sovereignty," 137.

[36] *Cong. Globe*, 33 Cong., 2 sess., Appendix, pp. 213-214; American Anti-Slavery Society, *Annual Report . . . May 9, 1855* (New York, 1855), pp. 60-65.

[37] "Letter of Judge A. D. Smith to a Public Dinner in His Honor," Milwaukee *Free Democrat*, Apr. 15, 1857.

[38] *Cong. Globe*, 33 Cong., 2 sess., Appendix, pp. 219-220; see also the remarks of Maryland's James Bayard, *ibid.*, p. 243.

[39] Richmond *Enquirer*, May 18, 22, 24, 1855.

[40] Various retaliatory proposals are reprinted in the *Liberator*, June 22, July 27, 1855; Richmond *Enquirer*, July 6, Sept. 18, 1855; for arguments against retaliation see Richmond *Enquirer*, Sept. 21, 25, 1855. A retaliatory bill was introduced during the 1856 Alabama legislative session but was not passed. *Liberator*, Jan. 25, Feb. 8, 15, 1856.

state facilities by the 1855 personal liberty law. The Senate did pass a bill, sponsored by the Democratic leadership, designed to quash state suits against United States marshals executing the Fugitive Slave Act, but antislavery congressmen blocked the bill in the House.[41]

Although passage of the personal liberty laws following the Kansas-Nebraska Act provoked heated rhetoric in Congress and in state legislatures, the problem of fugitive slaves soon receded into the background. Antislavery politicians shifted their primary attention to opposing expansion of slavery into the territories and to "bleeding Kansas." Southern congressmen, despairing of getting any substantial revision of the fugitive laws, dropped their complaints. More importantly, the small number of fugitive slaves actually escaping to free soil worked against any drastic southern action and cooled northern sentiments. During the next four years a few slave state legislators or fire-eating newspaper editors raised their voices, but there was little mention of personal liberty laws in the South until the secession crisis of 1860-1861.[42]

Although after 1855 the fugitive slave issue was largely forgotten in Washington and remained only a secondary grievance in the slave states, supporters of liberty laws still continued their agitation in northern legislatures. Drives for new laws temporarily stalled in 1856; even in supposedly radical Massachusetts the desire for state interposition cooled perceptibly. Charles Sumner had hoped that the 1855 measure would provoke further complaints by southern senators, giving him an opening to excoriate the slave power. Instead, the 1856 Massachusetts legislature defeated an attempt to strengthen the liberty law, and a Democratic sponsored repeal bill gained enough momentum for Sumner to complain about an embarrassing "fire in the rear." The liberty law appeared to be headed for extinction until the outpouring of antisouthern feeling following the caning of Sumner by Preston Brooks. The law was retained as a symbol of Massachusetts' support for the martyred senator.[43]

The *Dred Scott* decision in 1857 gave the appeals of proponents of state action new life. The adverse northern reaction to the Supreme Court's voiding of the Missouri Compromise line and to Chief Justice Roger B. Taney's statement that Negroes were noncitizens, lacking rights that white men had to respect, not only revived the movement for personal liberty laws but also provoked demands for state measures

[41] *Cong. Globe*, 34 Cong., 1 sess., pp. 395-397 (Shorter Resolution); New York *Herald*, Feb. 23, 1855 (Stuart Resolution); *Cong. Globe*, 33 Cong., 2 sess., Appendix, pp. 226-227, 243 (Toucey Bill).

[42] Craven, *Growth of Southern Nationalism*, pp. 152-153 notes the decline of southern concern with the fugitive slave issue; for the most recent estimate of the small number of slaves escaping to free territory see Larry Gara, *The Liberty Line* (Lexington, Ky., 1961), pp. 36-40.

[43] Sumner to Theodore Parker, Jan. 9, 1856, in Pierce, *Memoir and Letters of Sumner*, III, 426; *Liberator*, May 30, 1856; Godfrey T. Anderson, "The Slave Issue as a Factor in Massachusetts Politics from the Compromise of 1850 to the Outbreak of the Civil War" (Ph.D. dissertation, University of Chicago, 1944), pp. 136-137.

that would counter the Chief Justice's denial of Negro citizenship.[44] An 1857 New Hampshire "act to secure freedom and the right of citizenship," which was sometimes mistaken for a liberty law, provided that African ancestry was not a bar to citizenship in the Granite State. The legislature also included a "sojourner clause" which declared that all slaves brought into New Hampshire by their masters would be considered free men. The statute was clearly not designed as a personal liberty law because it specifically recognized the right of slaveowners to reclaim runaway slaves under federal statutes. A similar bill passed the New York assembly but died in the senate.[45] Other northern legislatures adopted true personal liberty laws following the *Dred Scott* decision. Maine extended fugitive slave suspects the additional protection of a defense attorney.[46] Republican legislators in Ohio overrode Democratic and downstate opposition to pass a liberty law prohibiting use of state jails, but Ohio Democrats, after sweeping the fall elections, promptly repealed the measure and frustrated later attempts to pass a new liberty law.[47]

In 1857, Wisconsin also enacted a comprehensive personal liberty law which included provision for a jury trial, state defense attorney, and various procedural safeguards. This act was more the product of the continuing war between Sherman Booth and the federal government than a reaction against the *Dred Scott* decision. Following the Wisconsin supreme court's ruling in favor of Booth and against the validity of the Fugitive Slave Act, the new Republican party strongly backed the abolitionist editor. Wisconsin Republicans adopted a strong states rights platform, one of the purposes being to support Booth, who faced federal court suits stemming from his slave rescue. Republican sponsors of the 1857 liberty law closely linked its passage with attempts to prevent United States marshals from executing a lien obtained in a civil suit against Booth's printing equipment. The Wisconsin assembly underwrote state support of Booth and future slave rescuers to the extent of reimbursing them for any civil damages assessed by federal courts. The state senate rejected this section of the liberty bill but did agree to a clause declaring that no liens in cases involving violation of the Fugitive Slave Act could be executed in Wisconsin and that persons in

[44] *Dred Scott* v. *Sanford*, 19 Howard 393 (1857). The literature on the case is extensive; a good summary of northern reaction to the decision is Nevins, *Emergence of Lincoln*, I, 112-118.

[45] *Laws of the State of New Hampshire, Passed June Session, 1857*, pp. 1876-77; the New Hampshire Supreme Court later issued an advisory opinion distinguishing this statute from the personal liberty laws of other states. *In re Opinion of the Justices*, 41 N.H. 553 (1861). "Report of the Special Committee [New York Legislature] on the Dred Scott Decision," New York *Times*, Apr. 11, 1857.

[46] *Public Laws of the State of Maine, 1857*, p. 28; Maine also adopted a "sojourner law" in 1857, denying slaveowners the right to bring their slaves into the state. *Ibid.*, p. 38.

[47] *Acts . . . Passed by the General Assembly of Ohio . . . 1857*, p. 170; *Ibid. . . . 1858*, p. 10; Eugene Roseboom, *The Civil War Era, 1850-1873* (Columbus, Ohio, 1944), pp. 260, 326-327, 341-347.

Booth's situation could remove federal lien proceedings to state courts.[48] Although Booth used the liberty law to recover his equipment from the federal government, he finally ran out of state support and found himself in jail after the United States Supreme Court reversed the Wisconsin Court in the famous case of *Abelman* v. *Booth*.

Taney's opinion in the *Booth* case settled the question of whether states could, as provided in some of the personal liberty laws, use writs of *habeas corpus* to remove fugitive slave suspects from federal authorities. State courts could never, Taney held, issue a writ when they knew that the petitioner was held by the national government. Likewise, the return of a writ showing that the prisoner was in federal custody immediately stopped all state proceedings. The *Booth* decision involved removal of a white man charged with interfering with the fugitive laws, but Taney's opinion was stated broadly and upheld the supremacy of the federal courts and national executive to administer the Fugitive Slave Act of 1850 entirely free from state interference.[49] Following *Abelman* v. *Booth* there was no way a state liberty law could be effective unless a slave claimant was foolish enough to bring his case before state courts or unless a state court was rash enough to issue a writ of *habeas corpus* in defiance of federal authority.

Still, the *Booth* case did not stop the drive for personal liberty laws that had revived after the *Dred Scott* decision. Until, and even during, the secession crisis abolitionists and a few antislavery Republicans continued to press for state nullification with a new, broader type of personal liberty law. The first concentrated drive for such a law came in the 1857 New York legislature. During the session a coterie of "Radical Abolitionists" led by Gerrit Smith and Frederick Douglass used opposition to Taney's *Dred Scott* opinion to win Republican support for a bill stating that no person could be removed from New York as a fugitive slave under any law, state or federal. Assembly Speaker Dewitt C. Littlejohn, a special target of Gerrit Smith's lobbying, argued that New York had to take extreme action to protect individual liberties from abridgement by the southern-dominated Supreme Court. The Republican leader ridiculed protests that the bill would lead to a direct conflict with the federal government. "Will James Buchanan march troops into New York, to coerce us into submission?" he taunted the Democratic opposition.[50] The abolitionists' attempt to interpose, rhetorically

[48] This discussion of the personal liberty law issue in Wisconsin is primarily based upon the voluminous material in Booth's newspaper, the Milwaukee *Free Democrat*, Feb. 9-20, 1857. See also *General Acts Passed by the Legislature of Wisconsin, 1857*, pp. 12-14; James L. Sellers, "Republicanism and States Rights in Wisconsin," *Mississippi Valley Historical Review*, XVII (1930), 213-229; Vroman Mason, "The Fugitive Slave Law in Wisconsin with Reference to Nullification Sentiment," *Wisconsin Historical Society Proceedings, 1895*, 117-144.

[49] *Abelman* v. *Booth*, 21 Howard 506 (1859); Bestor, "State Sovereignty," 136-42.

[50] *Radical Abolitionist*, May, 1857; New York *Times*, Apr. 17, 1857; Milwaukee *Free Democrat*, Apr. 24, May 7, 1857.

at least, state authority against the national government failed by only twelve votes.

Gerrit Smith and Frederick Douglass advanced their bill proposing virtual rebellion against national authority with the long range goal of winning Republican support for radical political action against the slave power. Unlike the Garrisonians, the Radical Abolitionist party of New York believed that the slave power could be attacked through the Republican party. Douglass was encouraged that their first effort to radicalize the Republican party through the extreme liberty bill had been so successful, but any hope of converting many Republicans into abolitionists through personal liberty laws soon proved chimeric.[51] When the Republicans were a newly-formed opposition party, states' rights rhetoric and proposals fitted their crusade against the slave power, but as their political base expanded, party leaders sought to avoid identification with extreme measures of questionable constitutionality. The liberty bills advanced after 1857 did not purport to remedy particular defects in the fugitive slave laws but openly rejected the validity of a provision of the Constitution itself. Outright denial of the clear requirement of returning fugitive slaves did not appeal to practical Republican politicians, intent upon building a winning northern coalition for 1860.[52]

Despite declining Republican support, abolitionists organized elaborate campaigns for new personal liberty laws in most northern states. Never blessed with much popular approbation, abolitionist groups struggled to keep their crusade going in the face of waning interest, even in staunchly antislavery Massachusetts. Appeals for radical personal liberty laws provided one means of keeping alive agitation on the slavery question. For this reason, the loosely amalgamated Garrisonian groups, which had never been greatly interested in liberty laws, began advocating legislation that went beyond the enactment of procedural safeguards.[53]

William Lloyd Garrison had previously endorsed the usual liberty laws, but he had stressed the need for more sweeping measures that would totally reject the concept of property in man and the proposition that fugitives could be returned to slavery.[54] After 1857 his followers sought state laws "prohibiting the surrender of any human being claimed as a slave." Because of the collaboration among the scattered Garrisonian societies, proposals, methods of agitation, and the agitators themselves were often the same in different states. The state societies

[51] Douglass to Smith, Apr. 20, 1857, in Philip Foner, (ed.), *The Life and Writings of Frederick Douglass* (New York, 1950), 406-407.

[52] See, for example, Abraham Lincoln to Samuel Galloway, July 28, 1859 in Roy Basler, (ed.), *The Collected Works of Abraham Lincoln* (New Brunswick, N.J., 1953), 394; editorial of Springfield *Republican* reprinted in *Liberator*, Feb. 18, 1859; editorial of Boston *Daily Advertiser* reprinted in *Liberator*, Sept. 14, 1860.

[53] Aaron M. Powell, *Personal Reminiscences of the Anti-Slavery and Other Reforms and Reformers* (New York, 1899), p. 126; Irving Bartlett, *Wendell Phillips, Brahmin Radical* (Boston, 1961), pp. 205-207.

[54] See, for example, *Liberator*, June 1, 1855.

coordinated petition drives with local abolitionist groups. Clergymen were asked to circulate petitions and to support the radical bills in their sermons. Women's rights leaders, such as Susan B. Anthony and Lydia Maria Child, urged women to sign the petitions. Abolitionist orators traveled to state capitols throughout the North, appealing for action and arguing constitutional problems with legalistic legislators.[55] Two Garrisonian assemblymen, Parker Pillsbury in New Hampshire and Aaron M. Powell in New York, actively directed attempts to nullify the Fugitive Slave Act. Republican legislators were not totally hostile to the abolitionists' appeals, but no legislature ever passed one of these radical laws. Pillsbury failed to get his bill past a first reading at the 1859 New Hampshire session, and the New York assembly rejected several times Powell's extreme proposals based on the "higher law."[56] Abolitionists came closest to victory in Massachusetts, where Democrats, led by former United States Attorney General Caleb Cushing, and a few Republicans defeated by only three votes a Republican-abolitionist radical liberty law in 1859. A similar Massachusetts drive in 1860 collected over 20,000 signatures but attracted very little Republican support during a national election year.[57]

Failure to add any new personal liberty laws to northern statute books did not discourage leaders of these campaigns. Wendell Phillips, a chief abolitionist strategist, admitted that his reason for "pushing this special question" was primarily to bring the slavery issue before northern legislatures and Congress and only secondarily to protect the rights of fugitive slave suspects. "What we want is agitation," Phillips told Massachusetts abolitionists. He believed that these bills would bring "the insults and fury of the South" down upon overly cautious antislavery politicians, such as Henry Wilson, spurring "him to the vigor of action needful for his own honor and that of his state."[58] Other leaders of the American Anti-Slavery Society agreed that the drives were valuable. Oral presentations before state legislatures allowed abolitionist speakers to spread their gospel from prestigious platforms; the cam-

[55] Powell, *Personal Reminiscences*, pp. 172-173; *Liberator*, Feb. 18, 25, Oct. 14, Nov. 18, 1859; *ibid.*, Jan. 27, 1860; American Anti-Slavery Society, *Annual Reports . . . for 1857 and 1858* (New York, 1859), pp. 131-142; American Anti-Slavery Society, *Annual Report . . . for Year Ending May 1, 1859* (New York, 1860), p. 108; Gerrit Smith, *Speeches and Letters, 1843-1873* (n.p., n.d.), No. 37.

[56] On New Hampshire see *Liberator*, July 1, 1859. For the drives in New York see New York *Tribune*, Mar. 7, Apr. 13, 19, 21, 1859; *ibid.*, Feb. 4, 14, Mar. 1, 1860. Vermont and Massachusetts were the only states that passed new legislation. A Vermont Act of 1858 brought together the provisions of the 1850 and 1854 personal liberty laws. In addition, the Vermont legislature added a "sojourner clause" and another section declaring that African ancestry was no bar to state citizenship. *Acts and Resolves . . . of Vermont . . . October Session, 1858*, pp. 42-44. A Massachusetts law of 1858 repealed some ancillary provisions of the 1855 liberty law, but the legislators left intact the sections guaranteeing rights to fugitive slave suspects. *Acts and Resolves of Massachusetts, 1858*, p. 151.

[57] *Liberator*, Apr. 1, 8, 15, Nov. 11, Dec. 9, 1859; *ibid.*, Feb. 8, 1860.

[58] Speech of Wendell Phillips at 1859 Massachusetts Anti-Slavery Society Convention, reprinted in *Liberator*, Feb. 4, 1859.

paigns also permitted circulation of "valuable antislavery documents" among suspicious northern citizens.[59]

These campaigns attracted attention during legislative sessions, but the larger goal of provoking nationwide controversy was not realized. Southern politicians and newspaper editors complained about northern perfidy, but few revived talk of retaliation against states with liberty laws or of strengthened fugitive slave laws. Virginia Democrats, who claimed that slaves were still escaping into Pennsylvania, raised the loudest protests against the liberty laws. The 1859 Virginia legislature passed a resolution condemning personal liberty bills, and Governor John Letcher, a moderate, advocated sending emissaries to northern states to seek repeal of the laws.[60] Northern Democrats continued to support southern complaints; both the Douglas and Breckenridge Democratic platforms of 1860 condemned the laws as "hostile in character, subversive of the Constitution, and revolutionary in their effect." Republican leaders tried to sidestep the issue; Abraham Lincoln advised Republicans to stop "tilting against the Fugitive Slave law" to avoid "the charge of emnity to the Constitution."[61]

The personal liberty laws played no significant part in the 1860 elections, but Lincoln's victory suddenly revived them as a national issue. Disunionists in the Cotton States, although unsure which states had passed the odious measures, used the liberty laws to justify the validity of their course. Georgia's secessionist leader Robert Toombs called the statutes positive proof of the North's violation of the Constitution and declared that they were only the first step in a systematic campaign to exterminate slavery throughout the South.[62] Because of the laws' prominence in secessionist rhetoric, compromisers from both sections talked for a short time as if the laws held the key to peaceful reconciliation. Some southern unionists agreed with the fire-eaters' indictment of the liberty laws but lamely advocated commercial retaliation instead of secession to obtain their repeal. A number of spokesmen from the upper South and border states claimed that removal of the liberty laws would help prevent the breakup of the Republic.[63]

[59] American Anti-Slavery Society, *Annual Report . . . for the Year May 1, 1860* (New York, 1861), pp. 260-261.

[60] *Journal of Virginia House of Delegates, 1859-1860*, pp. 64, 166, 272.

[61] Kirk H. Porter and Donald Bruce Johnson (eds.), *National Party Platforms, 1840-1964* (Urbana ,Ill., 1966), pp. 30-31; Lincoln to Schuyler Colfax, July 6, 1859, Basler, (ed.), *Works of Lincoln*, III, 390-391.

[62] See, for example, "Declaration of Causes Which Induced the Secession of South Carolina," in Frank Moore, (ed.), *The Rebellion Record, A Diary of American Events* (New York, 1861-1868), I, 3-4; Dwight L. Dumond, (ed.), *Southern Editorials on Secession* (New York, 1931), pp. 237-238; Robert Toombs to E. B. Pullin and others, in U. B. Phillips (ed.), "The Correspondence of Robert Toombs, Alexander H. Stephens and Howell Cobb," *Annual Report of the American Historical Association for the Year 1911* (Washington, 1913), 520-521.

[63] Alexander H. Stephens to J. Henry Smith, Dec. 31, 1860, *ibid.*, 526; New York *Tribune*, Nov. 14, 17, Dec. 3, 1860; compromise proposal of Richmond *Enquirer* reported by Chicago *Tribune*, Nov. 27, 1860; proposal of John Minor Botts of Va.

In the North, outside the Republican party, there was widespread sentiment for immediate repeal. In his long-awaited, carefully prepared message of December 3, 1860, James Buchanan endorsed the southern position on the liberty laws, warning the northern states that failure to repeal the laws, which "willfully violated" a portion of the Constitution "essential to the domestic security and happiness" of the South, would justify "revolutionary resistance to the Government of the Union" by the slave states. Almost all Northern Democrats and backers of the Bell-Everett Constitutional Union ticket of 1860 clamored for withdrawal of the liberty laws.[64]

Republicans were much more divided. For different reasons a number of Republicans urged immediate repeal. Republican businessmen hoped such action would hold off secession, at least in the border states and upper South. A well-publicized meeting of leading New York City merchants supported instant repeal of all liberty laws, and a similar gathering in Philadelphia pledged a prompt search of Pennsylvania's statutes for any offending law.[65] Practical politicians, such as Schuyler Colfax and Governor Edwin Morgan of New York, were politically embarrassed by Democratic attacks on the liberty laws. These leaders, more concerned with avoiding the stigma of Republican nullification than with heading off war, wanted the laws expunged in order to lift the onus of unconstitutional legislation from the party, enabling it to approach the impending conflict with "clean hands."[66]

Republican proponents of repeal met resistance from several fronts within their own party. Only three Republican governors unequivocally advised their state legislatures to heed demands for repeal.[67] Some Republicans strongly opposed immediate action but hinted that removal of the laws would be possible if it were not done under the threat of secession or if the South offered something in return, such as a revised

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reported by Chicago *Tribune*, Dec. 14, 1860; public letter of Gov. John Letcher of Virginia reprinted in New York *Tribune*, Dec. 1, 1860; public letter of John Bell of Ky. reprinted in New York *Tribune*, Dec. 12, 1860.

[64] Richardson (ed.), *Messages of the Presidents*, V, 626-653, esp. 629-630; P. Orman Ray (ed.), "Some Papers of Franklin Pierce, 1852-1862," *American Historical Review*, X, (1904), 365-366; Howard Perkins (ed.), *Northern Editorials on Secession* (Gloucester, Massachusetts, 1964; orig. ed., 1942), *passim*.

[65] *Proceedings of a Union Meeting, Held in New York: An Appeal to the South* (New York, 1860, pamphlet); *Cong. Globe*, 36 Cong., 2 sess., p. 121; Philip S. Foner, *Business and Slavery, New York Merchants and the Irrepressible Conflict* (Chapel Hill, 1941), pp. 228-231.

[66] Message of Gov. Edwin D. Morgan of New York, New York *Tribune*, Jan. 3, 1861; James A. Rawley, *Edwin D. Morgan, 1811-1883, Merchant in Politics* (New York, 1955), p. 124; Letter of George Ashmun (Chairman of 1860 National Republican Convention) in *Liberator*, Jan. 11, 1861; editorial of Springfield *Republican*, reprinted in *Liberator*, Nov. 30, 1860; Willard H. Smith, *Schuyler Colfax, The Changing Fortunes of a Political Idol* (Indianapolis, 1952), pp. 145, 149.

[67] William B. Hesseltine, *Lincoln and the War Governors* (New York, 1955), pp. 123-125. They were Andrew G. Curtin of Pa., Edwin Morgan of N.Y., Charles Smith Olden of N.J.

fugitive slave law.[68] Governor John A. Andrew of Massachusetts, a member of the politically powerful and strongly antislavery "Bird Club," was the most conspicuous leader who finally agreed to modification after rejecting outright repeal.[69] A good many Republicans absolutely refused to back down, arguing that the liberty laws were valid and should not be abandoned in the face of southern threats. Michigan's Governor Austin Blair, who had drafted his state's liberty law of 1855, refused to abandon it and publically defended its constitutionality. Charles Summer was indefatigable in urging Massachusetts Republicans to oppose the campaign for repeal instigated by the surviving leaders of the moribund Massachusetts Whig Party. Wendell Phillips, who personally rejected the Constitution, drew upon his early legal experience to give Massachusetts Republicans a long discourse on the constitutional intricacies of the liberty law question. Phillips and other abolitionists told Republican legislators to remain firm, assuring them that the laws were constitutional.[70]

During the first months of the secession winter, modification or repeal of the personal liberty laws remained a matter of serious discussion, but in the end only two states took positive action. Rhode Island Democrats, at the urging of national party officials, repealed the state's 1854 liberty law.[71] After complicated intraparty maneuvering and consultation with leaders throughout the North, Massachusetts Republicans modified their state's provisions on fugitive slaves. By the time they finally acted, however, the question of fugitive slaves and liberty laws was a dead issue.[72] Once the shock of secession had passed, national leaders realized the liberty law problem was a minor matter. Abraham Lincoln, for example, while steadfastly refusing to yield on the issue of expansion of slavery in the territories, supported repeal of all state statutes conflicting with the Fugitive Slave Act. Charles Francis Adams, whose membership on

[68] J. M. Forbes to Charles Francis Adams, Feb. 2, 1861, Adams Family Papers (microfilm edition); New York *Times*, Dec. 3, 4, 1860; Hartford *Courant*, Dec. 1, 1860.

[69] Gov. Andrews' message to the Massachusetts legislature in support of modification of the personal liberty law was the product of much consultation with Republican leaders in Massachusetts and in Washington. George Morey to Charles Francis Adams, Jan. 5, 1861, Adams Papers. See also the message of Gov. Israel Washbourne of Maine, New York *Tribune*, Jan. 7, 1861; Hesseltine, *Lincoln and War Governors*, pp. 110-111, 113-114.

[70] *Speech of Wendell Phillips Against Repeal of the Personal Liberty Bill [of Massachusetts]* (Boston, 1861, pamphlet); *Speech of Hon. P. Hitchcock of Geauga on the "Bill to Prevent Giving Aid to Fugitive Slaves" in the House of Representatives [of Ohio] Feb., 23, 1861* (Columbus, Ohio, 1861, pamphlet); Thomas Wentworth Higginson to Charles Francis Adams, Dec. 22, 1860, Adams Papers; G. N. Fuller (ed.), *Messages of the Governors of Michigan, 1824-1927* (Lansing, 1925-1927), I, 439-441; Pierce, *Memoir and Letters of Sumner*, IV, 16-21; Sumner (ed.), Works, V, 450-467.

[71] *Letters, Speeches and Addresses of August Belmont* (New York, 1890), pp. 30-36; New York *Herald*, Jan. 23, 26, 28, 1861.

[72] *Acts and Resolves of Massachusetts, 1861*, pp. 398-399; Henry G. Pearson, *The Life of John A. Andrew* (Boston, 1904), I, 166; *Liberator*, Jan. 11, 1861.

the House of Representatives compromise committee made him the recipient of numerous inquiries on the liberty laws, advised several of his correspondents that repeal would count only "a feather's weight" in preventing dissolution of the Union.[73]

If the personal liberty laws counted only "a feather's weight" during the secession crisis, they were important during the 1850's. The conflict between the northern states and the federal government over rendition of runaway blacks represented in concrete microcosm the basic constitutional problem dominating the first seven decades of the Republic: the locus of ultimate political authority within the federal system. The arguments of advocates and opponents of personal liberty laws support the view that the constitutional issue was not a simple one of southern states' rights versus the northern doctrine of national supremacy. Antislavery Republicans such as Wade and Sumner and abolitionist theorists were the primary champions of states' rights. Southerners supported strong national action to recover fugitive slaves.

The liberty laws are also a gauge of antebellum attitudes toward the status of free blacks. Large numbers of northerners disliked the flimsy procedural guarantees which seemed to threaten the liberty and safety of free Negroes. In this respect the liberty laws reflected a general northern desire that free blacks have a certain minimal degree of civil protection. But, at the same time, debates over the laws reveal the limits of northern libertarianism. Supporters of liberty laws showed little concern that the bills offered almost no practical assistance to blacks since most fugitive slave suspects were held by federal authorities. Many proponents came to view enactment as an end in itself rather than as a means of effectively raising the black man above second class citizenship.[74]

Although the personal liberty laws were important to the conflict over the Constitution and civil liberties, their greatest significance lay in their use, by both sides, as symbols around which clustered all of the emotional issues which separated the two antagonistic sections of the Republic. Most proponents of the laws considered the statutes a form of symbolic resistance to southern violations of individual liberties, incursions upon the authority of free state governments, and aggressions in the territories. Commenting on Massachusetts' liberty law of 1855, an astute correspondent from the New York *Tribune* observed that the law was of little practical consequence. The idea that a serious collision would occur between Massachusetts and the federal government was "simply laughable." "The value of the law," he went on, "is that it is a protest, the strongest and most dignified that Massachusetts

[73] Lincoln to William Seward, Feb. 1, 1861, in Basler (ed.), *Works of Lincoln*, IV, 183; *ibid.*, 156-157; Charles Francis Adams to Dwight Foster, Dec. 31, 1860, Adams Papers.

[74] See also Leon Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago, 1961), *passim*.

is able to make against slavehunting on her soil."[75] Similarly, to the South the liberty laws symbolized northern disregard of fundamental constitutional obligations and of the Black Republicans' hostility to the rights and property of slaveholders. Personal liberty laws, though not a substantive "cause" of the war, were symptomatic of more basic divisions. Debates over the laws provided rhetorical outlets which reflected and deepened sectional antagonism.[76]

[75] New York *Tribune*, July 28, 1855.

[76] The author wishes to thank Professor James A. Rawley of the University of Nebraska who suggested this topic and provided guidance for an earlier version of this article.